2001

Robert Bradley, Joyce Bradley; R. Dale Whitelock, Karma Whitelock; Louis Peterson; and Barbara Peterson v. Payson City Corporation : Brief of Respondent

Utah Supreme Court

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IN THE UTAH SUPREME COURT

ROBERT BRADLEY, JOYCE BRADLEY; R. DALE WHITELOCK, KARMA WHITELOCK; LOUIS PETERSON; and BARBARA PETERSON,	:	**COMBINED BRIEF OF RESPONDENT/CROSS - PETITIONER PAYSON CITY**
Petitioners and Cross-Respondents,	:	Supreme Court No. 20010233-SC
vs.	:	(Court of Appeals No. 990329-CA)
PAYSON CITY CORPORATION,	:	
Respondent and Cross-Petitioner.	:	Argument Priority 13

APPEAL FROM A DECISION OF THE UTAH COURT OF APPEALS

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STATEMENT OF JURISDICTION

The Supreme Court has jurisdiction over this appeal pursuant to Utah Code Ann. § 78-2-2(5) and the Order of this Court dated May 18, 2001.

STATEMENT OF ISSUES AND STANDARD OF REVIEW

Issues presented by Bradley's petition:

(1) Whether the Court of Appeals correctly applied the "reasonably debatable" standard in reviewing this legislative decision by the Payson City Council.

(2) Whether the Court of Appeals appropriately determined that this legislative decision of the Payson City Council to deny Bradley's rezoning request satisfied the reasonably debatable standard.

The same standard applies to both issues. On certiorari, this Court reviews the decision of the Court of Appeals for correction of error and does not review the decision of the trial court. Harper v. Summit County, 2001 UT 10, ¶ 10, 26 P.3d 193, 195.

Issue presented by Payson City's cross-petition:

(3) Whether the Court of Appeals erroneously concluded that it has original appellate jurisdiction over district court review of land use decisions by the governing body of municipalities and other units of local government under the Municipal Land Use Development and Management Act, Utah Code Ann. § 10-9-101, *et seq.*[1]

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[1] This same analysis applies to final decisions under the County Land Use Development and Management Act, Utah Code Ann. § 17-27-101, *et seq.*

On certiorari, this Court reviews the decision of the Court of Appeals for correction of error and does not review the decision of the trial court. Harper v. Summit County, 2001 UT 10, ¶ 10, 26 P.3d 193, 195.

PROVISIONS OF CONSTITUTION, STATUTES, ORDINANCES AND RULES

Utah Code Ann. § 10-9-1001(3):

> (3) The courts shall:
>
> > (a) presume that land use decisions and regulations are valid; and
> > (b) determine only whether or not the decision is arbitrary, capricious, or illegal.

Utah Code Ann. § 78-2-2(3)(j):

> (3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:
> . . .
> > (j) orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction;

Utah Code Ann. § 78-2a-3(2)(b)(i):

> (2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:
> . . .
> > (b) appeals from the district court review of:
> > > (i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies;

STATEMENT OF THE CASE

A. NATURE OF THE CASE

This case arises from the Payson City Council's exercise of its legislative discretion to deny Petitioners' (jointly the "Bradleys") two applications to rezone property located within

the City (the "Property") from low density residential/agricultural use to high density residential uses. The Property was mostly zoned R-1-A which is a low density residential agricultural zoning with a minimum lot size of one acre, permitting the keeping of animals. One portion of the property was zoned I-1 industrial. Bradleys' first application in January of 1996 sought to have their property rezoned R-2-75, a higher density multi-family residential zoning. Bradleys' second application in March of 1996 sought rezoning to R-1-9, a higher density single family residential zoning, which effectively superceded the earlier application. The City Council voted to deny both applications.

B. COURSE OF PROCEEDINGS

Bradleys sought judicial review of the City Council's denial of their rezoning request pursuant to Utah Code Ann. § 10-9-1001, claiming that the City's decision was arbitrary, capricious and illegal. On March 21, 1998, the City filed a motion for summary judgment arguing that, based upon the legislative record, the City had acted appropriately and within its legislative discretion in evaluating and denying the rezoning request. Bradleys subsequently filed a cross-motion for summary judgment and opposed the City's motion claiming that the City's decision was arbitrary and capricious.

By Memorandum Decision filed on January 22, 1999, the trial court ruled that the City Council's decision was arbitrary and capricious. It based its ruling on a finding that the reasons for the City's decision were (1) without sufficient factual basis and (2) based on citizen opposition. The court also indicated that it had reviewed the zoning maps and, substituting its judgment for the legislative discretion of the City Council, reached the

conclusion that there was no reason not to approve the rezoning. Ignoring the fact that the second application which triggered this legal challenge requested rezoning to the R-1-9 designation, the trial court ordered that "the zone change from R-1-A to R-2-75 is hereby approved." The court's Order granting summary judgment was entered on March 16, 1999.

On April 5, 1999, the City filed with the trial court its notice of appeal of the decision to this Court. The City's Docketing Statement was filed with this Court on April 26, 1999. By Order dated April 27, 1999, this Court transferred the appeal to the Court of Appeals, stating that the appeal was not within the appellate jurisdiction of this Court.

The City argued to the Court of Appeals that the trial court had incorrectly applied the "substantial evidence" standard in evaluating the exercise of legislative discretion by the City Council and had inappropriately substituted its judgment for that of the Council. The City further argued that under the "reasonably debatable" standard applicable to judicial review of a local legislative proceeding, such as a zoning decision, under Utah Code Ann. § 10-9-1001, the City's denial of Bradleys' request was not arbitrary, capricious or illegal.

The Court of Appeals agreed that the trial court had erroneously applied the "substantial evidence" standard in reviewing the City's decision. It issued its opinion in Bradley v. Payson City Corp., 2001 UT App. 9, 17 P.3d 1160 holding that the more deferential "reasonably debatable" measure is the appropriate standard of review of a municipal legislative decision.

This Court now has an opportunity to eliminate any potential confusion regarding the appropriate standard of review of municipal land use decisions and reiterate the well-recognized and important distinction between "legislative" and "administrative" or "quasi-judicial" decisions and the standard of review applicable to each. The City is also asking this Court to resolve the question of original appellate jurisdiction over land use decisions of local units of government, such as municipalities and counties.

C. STATEMENT OF FACTS

The Property at issue lies largely within an area zoned R-1-A, low density agricultural residential with one acre minimum lot size with some of the Property located in an I-1 industrial zone. (R. 70-71.) The R-1-A zoning permits the raising of horses, chickens and other animals consistent with the agricultural nature of the zone. The R-1-A zone is abutted on four sides by property zoned for industrial use. (R. 42-43.)

The 1995 Payson City General Plan in effect at the time the Bradleys' request for rezoning encourages residential areas to be located east of the I-15 buffer and establishes as a long-term policy, goal and objective the enactment of zoning ordinances utilizing the natural buffer of I-15 and providing for the I-1 industrial zoning designation in areas west of I-15. The general plan further encourages the concentration of I-1 industrial zoning in the natural commercial corridor between the Union Pacific and D&RW rail lines and Interstate exits #254 and 252. (R. 50, 52.)

In January of 1996 David S. White applied to Payson City for rezoning of property owned by Dale H. Tanner, Lewis J. Peterson and R. Dale Whitelock from R-1-A zoning to

R-2-75, a relatively high density multifamily residential zoning designation (the "White rezoning"). (R. 177-78.) The request came before the Planning Commission on February 6, 1996. At that time, Mr. White indicated his desire that the area involved be rezoned to provide rental housing within the City. Mr. Whitelock, one of the property owners represented by Mr. White, indicated that the area was no longer suitable for him to raise bobcats, so he had to relocate and was in favor of the rezoning. Commissioner Tuttle expressed the concern that many who had moved into the area had done so to have one acre lots. Chairman Stewart expressed concern that the general plan anticipated industrial development in the surrounding areas. The Commission voted to recommend the scheduling of a public hearing to consider the request. (R. 62-63, 166-67.)

The public hearing on the rezoning request was held March 20, 1996, before the Planning Commission. The Commission received a petition signed by 38 property owners in the area affected by the rezoning request opposing the White rezoning and stating a preference that the area remain zoned R-1-A. (R. 159-60) Although the majority of public comments opposed the White rezoning, either based on a preference for animal property, an interest in maintaining the character of the area, or concerns over infrastructure, several comments were in favor of the rezoning. After the public discussion, the Commission recommended that the City Council deny the request to rezone the Property from R-1-A to R-2-75. (R. 59-60, 153-55.)

On March 20, 1996, in a City Council meeting following the Planning Commission meeting, a public hearing was held on the White rezoning application. In addition to

public comments about retaining the current zoning for raising animals and preserving the nature of the neighborhood, other comments raised concerns about traffic levels in the area. The Council voted to deny the White rezoning based upon the general plan, traffic concerns, and the Planning Commission recommendation. (R. 64-65).

Prior to the City's denial of the White rezoning request, Louis J. Peterson filed a request to have the area encompassing his property and others rezoned from R-1-A to R-1-9 (the "Peterson rezoning") on March 8, 1996.[2] The reason given was "[t]he size of the lots are too large for the familys [sic] to handle." (R. 145.)

On April 11, 1996, the Planning Commission first considered the Peterson rezoning. The Commission noted that the Gordon Taylor property was not properly included in the request because it was outside the City limits and no annexation request for the property had been received. It also noted that an additional property would be affected, the "Toleman property which is currently Industrial would become Residential." The Commission voted to recommend approval of the Peterson rezoning and set it for public hearing subject to removal of the Gordon Taylor property from the request. (R. 122-23.)

The Peterson rezoning came before the City Council for public hearing on May 22, 1996. Included in the public input were comments by representatives of businesses in the abutting industrial area including Associated Foods, indicating its concern that truck noise

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[2] In their summary judgment memorandum, Bradleys stated that the application was also on behalf of R. Dale Whitelock, Robert Bradley, Gordon Taylor and Pete Schmidt to have their properties rezoned. The application does not indicate the names of these individuals, but the area to be rezoned includes property owned by them.

will cause residents to seek action against it, and Muir Roberts, worrying about whether residents would tolerate the noise and smell of its packing facilities. After closing the public hearing, the Council voted to deny the Peterson rezoning request. (R. 307-310.)

Bradleys commenced this action by Verified Complaint dated March 26, 1997, and filed April 1, 1997. (R. 1-16.) Pursuant to cross-motions for summary judgment by the parties, the trial court entered a Memorandum Decision on January 22, 1999. (R. 341-43). The summary judgment Order was entered on March 16, 1999 (R. 344-345); and the City's notice of appeal was filed on April 5, 1999. (R. 350-351.)

After the appeal was transferred to the Court of Appeals and before oral argument, Bradleys sought transfer of the appeal to this Court. The Court of Appeals concluded that it had original appellate jurisdiction to decide the appeal and proceeded with oral argument. It issued its opinion on January 11, 2001, holding that the trial court had applied the incorrect standard of review to the City's legislative land use decisions and that under the applicable "reasonably debatable" standard, the City's denial of the rezoning requests was not arbitrary, capricious or illegal. Bradley v. Payson City Corp., 2001 UT App. 9, 17 P.3d 1160.

SUMMARY OF ARGUMENT

As noted by the Court of Appeals, the decision of the Payson City Council to deny the Bradleys' rezoning request is clearly legislative in character, rather than administrative. This Court has long recognized the important and significant distinction between the appropriate standard for judicial review of legislative actions as opposed to administrative

decisions of a municipality, granting substantial deference and broad discretion to legislative land use decisions. This deference has evolved and been articulated as a "reasonably debatable" measure in which the Court upholds a legislative decision if there is any rational basis to support a municipality's exercise of legislative discretion, or, in other words, if it is reasonably debatable that the decision will promote the public health, safety and general welfare. The Court has scrupulously avoided substituting its judgment for that of local legislative decision makers and has recognized that merely because the information presented to the governing body may have also justified some reasonable alternative conclusion, that does not render the decision made by the City arbitrary, capricious or illegal.

Rather than the appropriate "reasonably debatable" standard, the trial court applied a "substantial evidence" standard to the City's decision. It held that the evidence did not support the City's denial of the rezoning request. It then reviewed zoning maps and substituted its judgment for the legislative discretion of the City Council and reversed the City's decision.

Before the Court of Appeals, the City argued that the trial court's use of the "substantial evidence" standard was incorrect as a matter of law and should be reversed. Bradleys argued that the legislative enactment of Utah Code Ann. § 10-9-1001 combined with this Court's ruling in Springville Citizens for a Better Community v. Springville City, 1999 UT 25, ¶ 23, 979 P.2d 332 mandated the application of the "substantial evidence" standard to the City's legislative land use decisions.

There is no evidence of a legislative intent to overrule the long-standing, well-established rule of law affording legislative decisions of local governmental entities broad discretion and judicial deference. Absent some clear indication of such intent, it is inappropriate to find that the language of § 10-9-1001 imposes a "one-size-fits-all" standard on both legislative and administrative decisions of local governments. The Court of Appeals correctly concluded that the legislature did not do so.

In Springville Citizens, this Court used the "substantial evidence" standard in reviewing the city's processing of a PUD application under its governing ordinances. However, the actions being reviewed in that case were clearly administrative in nature. The Court's authority for the "substantial evidence" standard was Patterson v. Utah County Bd. of Adjustment, 893 P.2d 602 (Utah App. 1995), a review of an administrative decision by a board of adjustment pursuant to Utah Code Ann. § 17-27-708. There is no indication in the Springville Citizens opinion that this Court intended to overrule 50 years of well-reasoned case law recognizing the significant distinction between the appropriate standard for judicial review of legislative decisions as opposed to administrative actions of a municipality. The Court of Appeals' careful analysis of this issue demonstrates the soundness of its conclusion. The deferential "reasonably debatable" standard should continue to govern judicial review of legislative land use decisions.

The Court of Appeals correctly applied the "reasonably debatable" standard to conclude the City's denial of the rezoning was not arbitrary, capricious or illegal. Under that deferential standard, it makes no difference whether there is also evidence which might

support an alternative outcome or that the Court may disagree with the City's decision. So long as there is a rational basis in the record in support of the City's decision, it is "reasonably debatable" whether it is in furtherance of the public health, safety and general welfare and therefore must be upheld. The Court of Appeals correctly applied that standard in upholding the City's exercise of legislative discretion to deny the Bradleys' rezoning request.

The City's cross-petition asks this Court to review the issue of original appellate jurisdiction of land use decisions by municipalities and other units of local government. There is no statutory basis for vesting the Court of Appeals with original appellate jurisdiction over district court review of local land use decisions. The Court of Appeals' conclusion, while perhaps understandable in light of the directive from this Court and the apparent confusion that exists in this area of the law, is nevertheless contrary to the plain and unambiguous language of the statute and should be reversed. Land use decisions by cities and counties are not "adjudicative proceedings" of "agencies," either by statutory definition or prior case law. As a matter of public policy, it is important that final decisions of the legislative body of counties and municipalities be potentially reviewable on direct appeal to the Utah Supreme Court, rather than only by way of a petition for writ of certiorari.

ARGUMENT

I. THIS COURT HAS LONG RECOGNIZED THE IMPORTANT AND SIGNIFICANT DISTINCTION BETWEEN THE APPROPRIATE STANDARD FOR JUDICIAL REVIEW OF LEGISLATIVE DECISIONS AS OPPOSED TO ADMINISTRATIVE ACTIONS OF LOCAL GOVERNMENT.

Bradleys do not dispute that the enactment and amendment of zoning ordinances is fundamentally a legislative act. Sandy City v. Salt Lake County, 827 P.2d 212, 221 (Utah 1992). *See also* Sherbel v. Salt Lake City Corp., 758 P.2d 897, 899 (Utah 1988) ("the passage of general zoning ordinances and the determination of zoning policy [are] properly vested in the legislative branch."); Gayland v. Salt Lake County, 358 P.2d 633, 635-36 (Utah 1961) (zoning is a legislative function carrying with it wide discretion); Crestview-Holladay Homeowners Ass'n v. Engh Floral Co., 545 P.2d 1150 (Utah 1976) (reviewing rezoning as a legislative action).

The legislative process involved in making policy decisions regarding land use issues is inherently political in nature and requires the governing body to exercise broad discretion in weighing the interests of all concerned in furtherance of the general welfare. Marshall v. Salt Lake City, 141 P.2d 704, 709-10 (Utah 1943) (noting varied interests considered in creating zoning plan); Jenkins v. Swan, 675 P.2d 1145, 1156 (Utah 1983) ("broad matters of a political nature are best determined in the legislative branch of government").

Precisely because such legislative decisions on planning and zoning issues affect such a broad range of public interests, they have traditionally been granted substantial judicial deference based upon the subjective nature of the issues and the constitutional separation of

powers doctrine. Springville Citizens for a Better Community v. City of Springville, 1999 UT 25, ¶ 23, 979 P.2d 332, 336 ("A municipality's land use decisions are entitled to a great deal of deference."); 1 Ziegler, Rathkopf's the Law of Zoning and Planning (4 ed. 1989, rev. 2001) § 3:13 at 3-28 to 3-32 (cited herein as "Rathkopf's"). The burden of overcoming this deference and presumption of validity lies with the plaintiff who is challenging the validity of the decision. *Id.* *See also* Call v. City of West Jordan, 614 P.2d 1257, 1258 (Utah 1980) (ordinance passed within the scope of legislatively granted power is accorded a presumption of constitutional validity); Naylor v. Salt Lake City Corp., 398 P.2d 27, 29 (Utah 1965) ("[W]e are more than cognizant of the proposition that the governing body of a city is endowed with considerable latitude in determining the proper uses of property within its confines.").

This Court has traditionally granted municipalities considerable discretion in the exercise of their legislative power in the area of land use and zoning.

> In the review of zoning cases the function of the court is narrow and its scope is limited to a determination of whether or not the action of the Board of County Commissioners as a legislative body is illegal, arbitrary, discriminatory or capricious. No contention is made that the county did not act within its grant of powers from the legislature in its adoption of the original zoning ordinance. The prior decisions of this court without exception have laid down the rule that the exercise of the zoning power is a legislative function to be exercised by the legislative bodies of the municipalities. The wisdom of the zoning plan, its necessity, the nature and boundaries of the district to be zoned are matters which lie solely within that discretion. It is the policy of this court as enunciated in its prior decisions that it will avoid substituting its judgment for that of the legislative body of the municipality.

Crestview-Holladay Homeowners Ass'n, Inc. v. Engh Floral Co., 545 P.2d 1150, 1151-52 (Utah 1976) (emphasis added).

Traditionally, the burden a plaintiff bears in overcoming the presumption of validity is substantial.

> While the most common statement of the degree of proof required to overcome the presumption of validity is that the issue must be removed from the area of reasonable debate, the courts have used a variety of language to describe what all agree is an extraordinary burden. A number of courts require that the litigant asserting invalidity prove by "clear and convincing" evidence that the ordinance is unreasonable, arbitrary, or otherwise invalid. Some courts require "clear and affirmative" evidence of invalidity, and others simply require that the invalidity be "clearly" shown or conclusively demonstrated.

1 Young, Anderson's American Law of Zoning (4 ed. 1996) § 3.21 at 136-37 (referred to herein as "Anderson").

On appeal from a legislative land use decision, a plaintiff must demonstrate that the evidence leads only to the conclusion that the legislative decision was arbitrary, capricious or illegal. Merely because the information presented during the legislative process might also lead to another possible reasonable outcome does not render the decision invalid, the appellate court must defer to the city's exercise of legislative discretion. Gayland, *supra.*

In stark contrast, the "substantial evidence" standard arises in the context of the case law addressing administrative or quasi-judicial land use decisions and does not apply to legislative decisions. *See* Brown v. Sandy City Bd. of Adjustment, 957 P.2d 207 (Utah App. 1998) (city's administrative interpretation of its zoning ordinances); Wells v. Bd. of Adjustment of Salt Lake City Corp., 936 P.2d 1102 (Utah App. 1997) (board of

adjustment decision denying variance); Xanthos v. Bd. of Adjustment of Salt Lake City, 685 P.2d 1032 (Utah 1984) (same); Patterson v. Utah County Bd. of Adjustment, 893 P.2d 602 (Utah App. 1995) (review of trial court's finding of arbitrary and capricious action by county in approving special exception to zoning ordinance); Davis County v. Clearfield City, 756 P.2d 704 (Utah App. 1988) (denial of conditional use permit); First Nat'l Bank of Boston v. County Bd. of Equalization of Salt Lake County, 799 P.2d 1163 (Utah 1990) (administrative evaluation of property for tax purposes); Chambers v. Smithfield City, 714 P.2d 1133 (Utah 1986) (administrative procedures for processing variance requests). There is no question that Utah law applies the "substantial evidence" measure to the evaluation of administrative and quasi-judicial decisions under the arbitrary and capricious standard.

This Court has long recognized the clear distinction between administrative and legislative activities. Salt Lake County Cottonwood Sanitary District v. Sandy City, 879 P.2d 1379, 1383 (Utah App. 1994) (improper to delegate legislative function to board); Sandy City v. Salt Lake County, 827 P.2d 212, 220 (Utah 1992) ("Boards of adjustment . . . lack the authority to determine zoning classifications of their own accord.") *See also* 5 Anderson § 21.04 at 699 ("[A] board of adjustment is an administrative body which may be authorized to exercise quasi-judicial powers. . . It is a body without legislative authority.")

There is no Utah case law which would support the application of a substantial evidence standard to judicial review of a legislative decision by the governing body of a municipality. Instead, this Court has always applied a highly deferential standard of review

to the question of whether a local legislative decision is arbitrary and capricious. Walker v. Brigham City, 856 P.2d 347, 349 (Utah 1993) (arbitrary and capricious standard measured as "wholly discordant to reason and justice"); Crestview-Holladay Homeowners Ass'n v. Engh Floral Co., 545 P.2d 1150, 1151-52 (Utah 1976) (deferring to judgment of county commission, finding zoning not to be arbitrary and capricious); Naylor v. Salt Lake City Corp., 410 P.2d 764, 766 (Utah 1966) (measure of arbitrary and capricious is whether "there is no reasonable basis whatsoever to justify [the legislative action]").

II. NEITHER THE LEGISLATIVE ENACTMENT OF § 10-9-1001 NOR THIS COURT'S DECISION IN SPRINGVILLE CITIZENS OVERRULES THE WELL-ESTABLISHED LAW GRANTING SUBSTANTIAL JUDICIAL DEFERENCE TO A MUNICIPALITIES' LEGISLATIVE DECISIONS.

Bradleys argued to the Court of Appeals and claim here that the standard applicable to judicial review of local legislative decisions should be the "substantial evidence" measure. In doing so, they rely on the legislature's enactment of a statutory basis for judicial review of municipal land use decisions in Utah Code Ann. § 10-9-1001 and this Court's opinion in Springville Citizens for a Better Community v. Springville City, 1999 UT 25, 979 P.2d 332.

In rejecting Bradleys' arguments, the Court of Appeals relied upon the decision of an earlier Court of Appeals panel in Harmon City, Inc. v. Draper City, 2000 UT App. 31, 997 P.2d 321. In a carefully reasoned analysis, the Harmon City court determined that "the Utah Legislature did not adopt a one-size-fits-all standard of review for legislative and administrative/adjudicative functions when it codified the 'arbitrary, capricious or illegal'

language of section 10-9-1001." Harmon City at ¶ 15, 997 P.2d 325. After analyzing Springville Citizens and the extensive Utah law discussing review of legislative land use decisions, the Harmon City court concluded that "[w]e do not think that the supreme court intended to sweep aside the long-standing distinction between a municipality's legislative and administrative acts . . ." *Id.* at ¶ 24, 997 P.2d 327. The Harmon City court's analysis of these issues was sound and the Court of Appeals was correct in relying on that analysis and applying the reasonably debatable standard to Bradleys' appeal.

A. THE LEGISLATURE DID NOT CREATE A "ONE-SIZE-FITS-ALL" STANDARD FOR THE REVIEW OF ADMINISTRATIVE AND LEGISLATIVE LAND USE DECISIONS BY MUNICIPALITIES.

Bradleys argue that the enactment of Utah Code Ann. § 10-9-1001 providing for judicial review of all municipal land use decisions is a legislatively created "one-size-fits-all" standard for reviewing all land use decisions, whether legislative or administrative. The language at issue is that limiting a reviewing court's analysis to a determination of "only whether or not the decision is arbitrary, capricious, or illegal." Utah Code Ann. § 10-9-1001(3)(b). Bradleys argue that because the legislature did not distinguish between legislative and administrative land use decisions, its intent was to impose a uniform standard of review for those fundamentally different types of decisions.

To reach Bradleys' conclusion, however, it is necessary to violate two basic rules of statutory construction. First, "[w]hen construing statutory language which is plain and unambiguous, [courts] do not look beyond the same to divine legislative intent." Cole v.

Jordan School Dist., 899 P.2d 776, 778 (Utah 1995) (citations omitted). Second, another "cardinal rule of statutory construction is that courts are not to infer substantive terms into the text that are not already there. Rather, the interpretation must be based on the language used, and the court has no power to rewrite the statute to conform to an intention not expressed." Berrett v. Purser & Edwards, 876 P.2d 367, 370 (Utah 1994) (citations omitted).

In Cole, this Court declined to find that the legislature, in amending a statute, intended to overrule a decision of this Court. Cole at 778. The Court stated that it was unconvinced the legislature would do so "without a more definite statement as to its intent." *Id.* *See also* Salt Lake County Cottonwood Sanitary Dist. v. Sandy City, 879 P.2d 1379, 1383 n. 5 (Utah App. 1992) (declining to find legislative overruling of case law despite some house debate indicating intent to overrule where "the plain language of the statutes reveals the action of the legislature did not accomplish that result.")

There is no real conflict between the "reasonably debatable" standard of review for legislative decisions when analyzed in the context of the arbitrary and capricious language of Utah Code Ann. § 10-9-1001. In point of fact, those positions are easily reconciled by a simple recognition of the fundamental distinction between the character of administrative or quasi-judicial decisions as opposed to legislative actions. By way of example, long-standing Utah law has always distinguished between the substantial evidence required for a finding of arbitrariness or capriciousness in the administrative or quasi-judicial context, *e.g.*, Patterson v. Utah County Bd. of Adjustment, 893 P.2d 602, 604 (Utah App. 1995) (review of board

of adjustment decision), as opposed to determining whether a legislative decision is arbitrary or capricious based on the more deferential standard of review of a legislative land use decision. *E.g.,* Gayland, *supra* at 634-35. The arbitrary and capricious standard has long been applicable to review of both types of decisions, but has historically involved distinctively different considerations--substantial evidence for administrative and quasi-judicial decisions and judicial deference and reluctance to substitute judicial judgment for local legislators in the exercise of legislative discretion.

There is nothing evident in the plain language of § 10-9-1001 which would lead to the conclusion that the legislature intended to extinguish this well-recognized difference in approach to a review for arbitrary or capricious action. The only reasonable conclusion, therefore, is that the legislature intended the courts to apply the existing appropriate standards to the two categories of review of land use decisions by local government. The Harmon City court agreed, noting the legislative intent to codify existing case law and standards of judicial interpretation.

> We conclude that the 1991 enactment of section 10-9-1001, which largely codifies the case law cited above, did not alter the deferential review of a municipality's legislative zoning classification decisions under the arbitrary and capricious standard.

Harmon City at ¶ 14, 997 P.2d 325.

The Court of Appeals correctly rejected Bradleys' "one-size-fits-all" argument based upon the enactment of § 10-9-1001. The appropriate standard of review for legislative land use decisions under § 10-9-1001 is the "reasonably debatable" standard.

B. THE COURT OF APPEALS CORRECTLY CONCLUDED THAT THIS COURT DID NOT INTEND TO REVERSE FIFTY YEARS OF WELL REASONED PRECEDENT IN ITS SPRINGVILLE CITIZENS OPINION.

Given their vehemence about the Court of Appeals' alleged error in applying the reasonably debatable standard, Bradleys present a surprisingly cursory and conclusory discussion of the Springville Citizens opinion.

> In *Springville Citizens* . . . this Court took the broad and plain language of Utah Code Ann. § 10-9-1001 at face value, questioning not whether the Utah Legislature somehow intended that two different standards of judicial review are to be derived from the single and simple standard set forth in the statute. In the course of refusing to distinguish between administrative and legislative functions, this Court, without reservation, unanimously accepted the Legislature's plain language and thereby made the "sweeping statement" that "[a] municipality's land use decision is arbitrary and capricious if it is not supported by substantial evidence."

Petitioner's Brief pp. 19-20 (citations omitted). The Springville Citizens opinion, however, merits more serious analysis.

The Springville Citizens case arose in the context of approval by Springville City of a planned unit development ("PUD") pursuant to city ordinances. Springville Citizens at ¶¶ 1, 2, 979 P.2d 333. The ordinances were already in place and the developer was seeking approval for a specific PUD. The legal action challenged the City's alleged failure to follow its own ordinances in complying with certain procedural requirements in the administrative processing of that request for development approval. *Id.* at ¶ 12, 979 P.2d 334.

Although, as noted by the Court of Appeals below, this Court "did not discuss whether it viewed the City of Springville's decision as administrative or legislative." Bradley

at ¶ 13, 17 P.3d 1164, it is apparent from the context of the discussion in the opinion that all of the issues addressed by this Court in Springville Citizens arose from the administrative processing of the PUD application pursuant to the standards set forth in previously adopted city ordinances. Illustratively, this Court focused on whether drawings had been certified by an irrigation company as required by city ordinance (Springville Citizens, ¶ 15); whether the Planning Commission had reviewed the final plat, engineering drawings and documents as required by city ordinance (Springville Citizens, ¶ 16); whether modifications required by the City Council to the final subdivision plat had been referred to the Planning Commission as required by city ordinance (Springville Citizens, ¶ 17); the allegation that the City had essentially granted variances without referring them to the Board of Adjustment in violation of certain state statutory provisions (Springville Citizens, ¶ 18); and finally, whether certain documents were before the City Council or Planning Commission at the time they made their respective decisions as required by local ordinance (Springville Citizens, ¶ 19). None of these issues address any basic policy decisions involving the exercise of legislative discretion. The entire inquiry focused exclusively on compliance with procedural requirements of Springville City ordinance and state statute in the administrative context.

It is also instructive to look at the authority discussed by this Court in Springville Citizens. For the proposition that "[a] municipality's land use decision is arbitrary and capricious if it is not supported by substantial evidence," the Court cited Patterson v. Utah County Bd. of Adjustment *supra*. Patterson was a review of an administrative decision by a

board of adjustment granting a special exception for an air strip. What Bradleys are arguing is that this Court, by referring to a Court of Appeals decision applying the substantial evidence standard to a review of an administrative decision, intended to overrule 50 years of case law and begin applying the substantial evidence standard to all subsequent legislative decisions by local governments in the area of land use and zoning.

The Harmon City court reviewed Springville Citizens and arguments similar to those asserted by Bradleys and concluded that this Court did not, simply by making a broad introductory statement about the substantial evidence standard, intend to abandon the considerable case law supporting the more deferential reasonably debatable standard in the legislative context. Harmon City at ¶ 19, 997 P.2d 326. The court based its conclusion on the nature of the underlying municipal action, approval of a PUD "rather than reclassification of the zoning district," and the challenge asserted, *i.e.*, that the city failed to follow its mandatory ordinances which limited its discretion in processing and approving the PUD. *Id.* at ¶ 20, 997 P.2d 326-27. Examining this Court's statement of the substantial evidence requirement in Springville Citizens, the Harmon City court noted the authority supporting that statement and concluded that "[w]e do not think that the supreme court intended to sweep aside the long-standing distinction between a municipality's legislative and administrative acts by citing to a case controlled by a statute [§ 17-27-708] inapposite to review of legislative zoning decisions." Harmon City at ¶ 24, 997 P.2d 327-28.

The Court of Appeals below similarly rejected Bradleys arguments and summarized Harmon City in reaching its conclusion.

> Significantly, *Harmon City* interpreted *Springville Citizens* to still differentiate between administrative and legislative proceedings. This court determined that *Springville Citizens* involved judicial review of an administrative proceeding governed by city ordinances that expressly limited the city's discretion over PUD approvals. In contrast, *Harmon City* involved a request to change the city's zoning which is governed only by section 10-9-1001(3). In other words, this court distinguished *Springville Citizens* because it involved an administrative proceeding which has traditionally been reviewed under the substantial evidence standard, whereas *Harmon City* addressed a legislative proceeding traditionally reviewed under the reasonably debatable standard. Thus, according to *Harmon City*, the reasonably debatable standard must be applied when reviewing a municipality's legislative decisions. Both the substantial evidence and reasonably debatable standards, however, are alternative aspects of the arbitrary and capricious standard of review. Thus, a municipality's decision is always reviewed under the arbitrary and capricious standard; however, under that standard, an administrative proceeding is viewed non-deferentially under the substantial evidence standard, while a legislative proceeding is viewed deferentially under the reasonably debatable standard.

Bradley at ¶ 15, 17 P.3d 1164-65 (citations omitted). This conclusion is well-reasoned and legally correct. The Court of Appeals therefore correctly applied the reasonably debatable standard to its review of the City's legislative zoning decision.

III. THE CITY'S DENIAL OF BRADLEY'S REZONING REQUEST WAS NOT ARBITRARY, CAPRICIOUS OR ILLEGAL.

The decision of the Payson City Council to deny the Bradley's rezoning request involved the exercise of legislative discretion making a fundamental policy decision which, as recognized in Harmon City, is a decision "with which courts will not interfere except in

the most extreme cases." Harmon City at ¶ 18, 997 P.2d 321. The decision of whether a use is compatible with adjoining properties is an inherently subjective determination, implicating political as well as factual considerations. Marshall, *supra* at 109-10. Similarly, a decision of whether a requested zoning change is consistent with the municipal policies stated in a general plan is also subjective. Both inquiries require that fundamental policy decisions affecting property owners and residents throughout the city be made by the legislative body.

In these legislative determinations, it is frequently arguable that a different outcome may also be supportable by facts and information presented to the legislative body. As a matter of law, however, simply because information before the City Council may have also justified a different conclusion, that does not render the decision arbitrary, capricious or illegal or justify a court's substitution of its judgment for that of the local legislative decision makers. Sandy City at 482; Gayland at 636.

Bradleys would have this Court restrict the type of information which a legislative body may appropriately consider in exercising its legislative discretion in making policy decisions regarding zoning matters to the type of evidentiary facts more appropriate to a quasi-judicial setting. This Court, however, has described a much broader source of information which may be appropriately considered in making the types of policy choices involved in the legislative setting.

> In support of its contention that the refusal to approve its application was an arbitrary deprivation of its property rights, plaintiff argues that the Commission [*i.e.*, the legislative body] improperly heard,

> considered and based its determination on protests and representations voiced by people representing jealous business interests in the general area. We do not see any impropriety in the Commission receiving and taking into account any information they had to offer bearing on the problem under consideration.
>
> It is important to keep in mind that such a hearing is not of the same character as a trial, nor even of an administrative hearing or other legal proceeding, and is not limited by formal rules of procedure or evidence as they are. In pursuing its authority to zone the county the Commission is performing a legislative function. It has the responsibility of advising itself of all pertinent facts as a basis for determining what is in the public interest in that regard. For this reason it is entirely appropriate to hold public hearings and to allow any interested parties it desires to give information and to present their ideas on the matter. But this is by no means the only source from which the commissioners may obtain such information. From the fact that they hold such public offices it is to be assumed that they have wide knowledge of the various conditions and activities in the county bearing on the question of proper zoning, such as the location of businesses, schools, roads and traffic conditions, growth in population and housing, the capacity of utilities, the existing classification of surrounding property, and the effect that the proposed reclassification may have on these things and upon the general orderly development of the county. In performing their duty it is both their privilege and obligation to take into consideration their own knowledge of such matters and also to gather available pertinent information from all possible sources and give consideration to it in making their determination.

Gayland at 635-36. As Gayland points out, the public clamor doctrine has no application when a legislative body acts in a legislative capacity.

Bradleys' attempt to establish that the City's decision did not meet even the fairly debatable standard. However, a complete review of the facts available in the legislative record and the decision of the Court of Appeals establishes just the opposite. For example, Bradleys point out a potential discrepancy between the narrative policy direction in the

Payson City General Plan and the map which is part of that document. To the extent there is some discrepancy or inconsistency between the policy, goals and objectives clearly articulated by the narrative portion of the general plan and the general plan map, that is exactly the type of fundamental policy issue that should be reserved to the City Council rather than the judiciary. The Bradleys would have this Court ignore the clear directive of the general plan to encourage residential uses to be located east of the natural buffer provided by I-15 and provide for industrial zoning in the areas west of I-15 while relying exclusively on the depictions in the general plan map. By doing so, Bradleys demonstrate a fundamental misunderstanding of the reasonably debatable standard when they charge that the Court of Appeals ignored evidence in support of their position.

Under the reasonably debatable standard, a court only determines whether there is evidence in the record which would support the decision of the legislative body. Merely because there may be another reasonable alternative conclusion does not alter the outcome under the reasonably debatable standard. If there is a choice to be made between two equally supportable policy options, the Court must defer to the exercise of legislative discretion by the City Council. For Bradleys to prevail, they cannot simply rely on the existence of some evidence which would also support their position. Instead, they must demonstrate that there is no reasonable basis in support of the legislative decision made by the City Council.

With respect to the Council's traffic concerns, Bradleys argue that the sole evidence in the record with respect to traffic "were unsupported assertions by citizens with no known

experience or training in the traffic engineering or planning fields." (Petitioner's Brief p. 24.) Bradleys are relying on a trial level evidentiary standard which this Court rejected in Gayland. The Council may not only rely on the opinions of residents, but may also rely on their personal knowledge. Gayland, *supra*. Merely because there is a conflict between the opinion of Bradleys' expert and the opinions of residents, that is an issue for the City Council to resolve in the exercise of their policy judgment. In addition, in the context of the legislative process making policy choices, there is more to traffic concerns than mere quantification. In this case the focus was on the character of industrial traffic conflicting or being incompatible with the quiet enjoyment of residential uses.

The role of the planning commission in the legislative process is also discretionary with the legislative body. The planning commission is by definition performing an advisory role, and the City Council is not bound to follow its recommendation. A council "is not bound by the commission's findings even if they are supported by substantial evidence." Heilman v. City of Roseburg, 591 P.2d 390, 392 (Or.App. 1979). *See also* 4 Anderson § 23.28 at 231. The Municipal Land Use Act does not require a legislative body to follow the planning commission's recommendation. *E.g.,* Utah Code Ann. § 10-9-403 (requiring only submission to planning commission for recommendation). On the other hand, the Council may choose, at its discretion, to follow a planning commission recommendation. That recommendation, however, is only one of many considerations before the legislative body in making policy choices in rendering a zoning decision.

The Court of Appeals reviewed the record and found evidence, not discussed in Bradleys' brief, supporting the City Council's decision.

> In this case, the record reveals that virtually all the material presented to the Planning Commission and to the City Council consisted of public comment both for and against the zoning change and presentation of the General Plan and the Planning Zoning Map. Our review of the record in this case indicates that the City Council properly considered the public comment and came to a reasonable decision based on the information before it. Specifically, two businesses in the area expressed concern over the compatibility of higher density residential areas with their businesses and the neighboring industrial zones. One of the businesses submitted a letter detailing why it located in the area. This business stated it was attracted to the area because the "master plan ... was far sighted enough to separate the industrial area from the residential area by a natural break." The business stated that it operates twenty-four hours a day with "bright dock lights, and large trucks ... [a]ll of which would be a concern for the future residential area that is proposed." Another businessman in the area testified that because his business was contiguous to the proposed zone change he felt he would be out of business within a year because neighboring residents would not tolerate the noise and smell from his fruit processing plant.

Bradley at ¶ 23, 17 P.3d 1167.

As observed by the Court of Appeals, there was a legitimate concern raised by business operators in the industrial area west of I-15. There was also concern expressed by owners of residential/agricultural property that the animals which they raise may be offensive to individuals in higher density residential areas, leading to deprivation of their ability to keep animals on their properties. As to the traffic concerns, the legislative body was not required to evaluate independent traffic studies, but could give some weight to the common sense understanding by Council members that adding a large development of

higher density residential properties would result in an increase of traffic in and around the area. Only the Council members could determine whether City policy should support additional spending to accommodate that traffic increase in an area which the general plan contemplates for industrial use and accommodates existing low density residential/agricultural uses.

These are all valid concerns to be addressed by the City Council in formulating its fundamental policy decision with respect to appropriate zoning designations and development west of I-15. There is ample evidence in the record demonstrating the reasonableness of the Council's legislative decision. While there may also have been an alternative outcome reasonably supported by the record, that is of no import. The reasonably debatable standard defers judgment to the legislative body where there is some reasonable basis in the record for the legislative decision. The Court of Appeals correctly concluded that the City's rejection of Bradley's rezoning application was not arbitrary, capricious or illegal. That decision should be affirmed.

IV. THE COURT OF APPEALS ERRED IN CONCLUDING THAT IT HAS ORIGINAL APPELLATE JURISDICTION OVER CASES ARISING FROM LAND USE DECISIONS BY LOCAL GOVERNMENTAL ENTITIES.

Payson City appealed the trial court's reversal of the City Council's decision to deny the Bradleys' applications for rezoning directly to this Court. Bradley ¶ 8, 17 P.3d at 1163. This Court then transferred the appeal to the Court of Appeals, stating that the appeal was not within the original appellate jurisdiction of this Court. *Id.*

Under Utah Code Ann. § 78-2a-3, the Court of Appeals has original jurisdiction to hear appeals from "adjudicative proceedings of agencies of political subdivisions of the state" Utah Code Ann. § 78-2a-3(2)(b)(i).

That provision is apparently intended to establish a body of expertise in the Court of Appeals for review of such adjudicative proceedings under the Administrative Procedures Act, Utah Code Ann. § 63-46b-0.5, *et seq*. The Administrative Procedures Act applies to "all state agency actions." Utah Code Ann. § 63-46b-1(1)(a). "Adjudicative proceeding" is specifically defined as meaning action by a state agency under the Administrative Procedures Act. The Act specifically excludes in the definition of "agency," "any political subdivision of the state, or any administrative unit of a political subdivision of the state." Utah Code Ann. § 63-46b-2(1)(b). See also, Davis County v. Clearfield City, 756 P.2d 704, 706-707 (UT App. 1988). The present action is therefore not an "adjudicative proceeding," but rather consists of a limited judicial review of a local land use decision under Utah Code Ann. § 10-9-1001.

Despite the fact that no statutory provision expressly grants the Court of Appeals original jurisdiction over appeals from district court review of land use decisions by the governing body of a municipality, in an attempt to reconcile this apparent confusion, the Court of Appeals concluded that it "must have jurisdiction." *Id.* ¶ 9 at 1163. In order to accommodate that conclusion, the court was forced to strain the statutory language regarding its jurisdiction by inferring substantive provisions not present in that language.

> The supreme court, however, seems to have consistently determined that it does not have original appellate jurisdiction over zoning cases under the catch-all provision found in section 78-2-2(3)(j). Accordingly, this court must have jurisdiction. Examining section 78-2a-3, the only provision that could apply is subsection (2)(b)(i) which gives this court jurisdiction over "appeals from the district court review of adjudicative proceedings of agencies of political subdivisions of the state or other local agencies...." Utah Code Ann. § 78-2a-3(2)(b)(i) (1996). As Payson City's counsel noted, however, this case does not arise from an "adjudicative" proceeding, but rather a legislative proceeding. Nevertheless, in order to effectuate the supreme court's order transferring these appeals to this court, "adjudicative" must be read broadly to include both administrative and legislative proceedings of state political subdivisions and local governments. Thus, read in conjunction with section 78-2-2, governing the supreme court's jurisdiction, section 78-2a-3(2)(b)(i) confers original appellate jurisdiction to this court over this matter.

Bradley ¶9, at 1163-64.

This conclusion is legally unsupportable. The jurisdiction of the Court of Appeals is defined by Utah Code Ann. § 78-2a-3(2). There is no provision within § 78-2a-3(2) which expressly grants the Court of Appeals jurisdiction over land use decisions of local governmental entities. It is therefore logical to conclude that this Court has appellate jurisdiction over those decisions under Utah Code Ann. § 78-2-2(3)(j) which provides that this Court has jurisdiction over "orders, judgments, and decrees of any court of record over which the Court of Appeals does not have original appellate jurisdiction."

Two rules of statutory construction are applicable in this analysis. First, it is a basic rule of statutory construction that courts interpret statutes according to the plain language of the statute. *E.g.,* Hercules Inc. v. State Tax Comm'n, 877 P.2d 133, 136 (Utah 1994); Schurtz v. BMW of North America, Inc., 814 P.2d 1108, 1112 (Utah 1991). Second, as

discussed above, a court may not derive substantive meaning from the statutory language which does not exist in that language. Berrett v. Purser & Edwards at 370.

Under the rules of statutory construction as applied to the provisions governing appellate jurisdiction, the Court of Appeals erred in concluding that it has original appellate jurisdiction over land use decisions by local governmental bodies. Proper construction of the statutes yields the conclusion that this Court has jurisdiction over those appeals pursuant to Utah Code Ann. § 78-2-2(3)(j).[3]

CONCLUSION

Utah law has long recognized the critical distinction between the appropriate standard for judicial review of legislative decisions as opposed to administrative actions by local governmental entities, such as municipalities. Legislative land use decisions have appropriately been afforded broad judicial deference and upheld if it is fairly or reasonably debatable whether the action taken is in furtherance of the public health, safety and general welfare. There is nothing in Utah Code Ann. § 10-9-1001 which supports the conclusion that the legislature intended to overrule that long-standing judicial deference to local legislative decisions. It is also unreasonable to assume that this Court, in referring to decisions made in an administrative context in Springville Citizens, intended to abolish that well-established rule of judicial deference and impose the substantial evidence standard on legislative decisions by municipalities. The Court of Appeals carefully analyzed the

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[3] This conclusion obviously does not preclude the Court of Appeals from hearing appeals of these legislative decisions which are filed with this Court and transferred to it pursuant to §§ 78-2-2(4) and 78-2a-3(2)(j).

applicable law and correctly concluded that the "reasonably debatable" measure rather than the "substantial evidence" standard applies to judicial review of local legislative land use decisions under § 10-9-1001. That legal conclusion should be affirmed.

The bottom line is that it is reasonably debatable whether rezoning to permit higher density multi-family residential development on lots as small as 7500 square feet is consistent with the policy goals and objectives articulated in the Payson City General Plan, which encourages industrial uses to be concentrated in the natural commercial corridor west of I-15 and future residential uses to be located east of I-15. This quintessential exercise of legislative discretion by the Payson City Council necessarily involves an inherently political and subjective determination of what is in the best interests of the residents of the City. Under these circumstances, consistent with a large body of well-reasoned precedent, this Court should respectfully decline the invitation to reject that standard and defer to the exercise of legislative discretion by the Payson City Council. Applying the correct standard to the record before the Court of Appeals leads to the conclusion that the decision of the City Council in denying the Bradleys' rezoning request was not arbitrary, capricious or illegal. That conclusion by the Court of Appeals should be upheld.

Finally, this Court should correct the error of the Court of Appeals in straining the rules of statutory construction to support the conclusion that it has original appellate jurisdiction over land use decisions by local governmental entities. The clear and unambiguous language of the statute places original appellate jurisdiction over such cases in this Court, although it may obviously elect in the exercise of its discretion to transfer such

appeals on a case-by-case basis to the Court of Appeals. As a matter of public policy, it is important that final decisions of the legislative bodies of counties and municipalities are potentially reviewable on a direct appeal to the Utah Supreme Court, rather than only by way of a petition for writ of certiorari.

RESPECTFULLY SUBMITTED this 1st day of February, 2002.

WILLIAMS & HUNT

By _____
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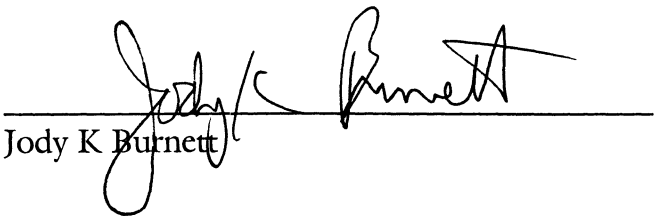
CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of February, 2002, two (2) true and correct copies of the foregoing **Combined Brief of Respondent/Cross-Petitioner Payson City** were sent by United States mail, postage prepaid thereon, mail to Scott L. Wiggins and Mark E. Arnold, Arnold & Wiggins, P.C., American Plaza II, Suite 105, 57 West 200 South, Salt Lake City, UT 84101.



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